



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	06/30/99	Bill No:	AB 486
Tax:	Business and Property	Author:	Wayne
Board Position:		Related Bills:	

BILL SUMMARY:

This bill would revise the procedural requirements for the adoption, amendment, or repeal of a regulation set forth under the California Administrative Procedure Act to an “advisory interpretation,” as defined, and would prescribe a new procedure by which a state agency may communicate, in a nonbinding, advisory form, the agency’s interpretation of a statute, regulation, agency order, court decision, or other provision of law, except legal rulings of counsel, as specified. This bill would also add “Consent Regulation Procedures” to the Act, as specified.

ANALYSIS:

Current Law:

Current law establishes detailed procedural requirements in the Administrative Procedure Act (APA) that must be followed by state agencies in the adoption of regulations. Under current law, interested persons may petition a state agency requesting the adoption, amendment, or repeal of a regulation. Agencies must notify the petitioner in writing either to deny the request or to schedule the matter for public comment, and submit their decision to the Office of Administrative Law (OAL) as specified. A denied petitioner may request reconsideration of any denied petition.

The procedures also provide for public participation in agency rulemaking by requiring that the agency notify by mail every person who has filed a request for notice of regulatory actions, and also a representative number of businesses affected. Also, if a public hearing is not held, that agency shall afford any interested person or representative the opportunity to present written statements about the regulation. A public hearing must be held if requested in writing within a specified time period.

In addition to these specified procedural requirements, all proposed adoptions and amendments of regulations must meet six substantive standards. The OAL is charged with the orderly review of adopted regulations in order to reduce the number of administrative regulations and improve the quality of those regulations that are adopted. In its review, the OAL determines if the regulations comply with all the standards prescribed by law, which are: necessity, authority, clarity, consistency, reference, and nonduplication.

Proposed Law:

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

This bill would amend existing law to include “advisory interpretations” in the provisions containing procedures for the adoption, amendment, or repeal of a regulation. This bill would also add Article 10 (commencing with Section 11360.010) to the Government Code to provide procedures by which a state agency may communicate, in a nonbinding, advisory form, its interpretation of a statute, regulation, agency order, court decision, or other provision of law that the agency enforces or administers. According to the bill, “advisory interpretation” means a written agency statement, adopted pursuant to the bill, that expresses the agency’s opinion as to the meaning of a statute, regulation, agency order, court decision, or other provision of law that the agency enforces or administers, or that governs the agency’s procedures. Section 11360.010 states that “nothing in this article requires an agency to adopt an advisory interpretation.”

This bill specifically excludes legal rulings of counsel issued by the Franchise Tax Board or the State Board of Equalization from the advisory interpretation procedural requirements as added by Article 10.

This bill would also add “Consent Regulation Procedures” to the Act, to provide a streamlined alternative to the regulatory process that an agency may use when taking noncontroversial regulatory action (one in which the agency received no adverse comments).

COMMENTS:

1. Sponsor and Purpose of the Bill: This bill is sponsored by the California Law Revision Commission in an effort to provide a streamlined procedure that a state agency may use to communicate generally applicable, nonbinding, interpretive advice or "consent regulations."
2. The Board currently offers non-binding opinions, which are not subject to the provisions of the APA, to any requesting party. This process allows the Board to disseminate informal rulings without extensive administrative delays so that taxpayers, their advisors, and county officials can make business decisions with an understanding of the tax consequences. Advisory interpretations and the related administrative requirements proposed by this bill are less efficient than the process already employed by the Board and therefore not likely to be used.
3. Advisory interpretations would have limited legal and practical meaning. The bill explicitly states that an advisory interpretation is not the exclusive means by which an agency may express its interpretation of a statute, has no legal effect, and is entitled to no judicial deference. Adoption of an advisory interpretation would be optional and does not preclude expression of an agency’s interpretive opinion by other lawful means. The Board may still validly express its interpretation of law in a regulation, advice letter, or case-specific adjudication, which is entitled to judicial deference. As a result, this bill provides no incentive for any agency to use the proposed advisory interpretation process.
4. The Board and other state agencies would not be required to employ either the advisory interpretation or consent regulation procedure. Therefore, agencies would not be adversely affected by the provisions in this bill.

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COST ESTIMATE:

Since this bill would not require the Board to employ its provisions, it is expected that any costs associated with this bill would be absorbable.

REVENUE ESTIMATE:

This bill would not impact state revenues.

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